

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 637 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

KANAIYALAL L RANPARA

Versus

DAHVALAL P TANK

Appearance:

MR KB PUJARA for Petitioners
MR PV HATHI for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 18/10/2000

C.A.V. JUDGEMENT

#. This is tenant's revision under sec.29(2) of the
Bombay Rent Act.

#. The brief facts giving rise to this revision are as
under :

The suit premises consisting of two rooms, a kitchen and Osari was let out by the plaintiff on monthly rent of Rs.35=00. Rent from December 7, 1978 to February 6, 1979 fell due from the defendant no.1. Notice of demand was sent and served upon the defendant no.1. Though, the defendant no.1 was alleged to be tenant on a rent of Rs.150=00 per month yet, in proceedings for fixation of standard rent, this Court fixed the standard rent at Rs.35=00 per month with effect from June 23, 1971. It was alleged that the defendant no.1 had left Rajkot permanently since last four years and had permanently settled in Junagadh, near Ajanta Talkies in the house of Pitambar Nathubhai and Jayantilal Pitambar. This accommodation also consists of two rooms and a Osari, which was taken on rent by the defendant no.1 on Rs.80=00 per month, where he is doing his business in Junagadh. It was thus alleged that, the defendant no.1 has acquired alternative residential accommodation in Junagadh. It was also alleged that the defendant no.1 had illegally transferred possession of the suit premises to his brother/defendant no.2 and has assigned or transferred in any other manner his tenancy rights in favour of the defendant no.2. Thus, on these two grounds, eviction of the two defendants was sought.

#. The suit was resisted by the defendants on the ground that, the defendant no.1 took the suit premises on lease in his favour, as well as, in favour of his father and two brothers, and that, all of them were residing as members of joint family in the suit premises. It was denied that the defendant no.1 has permanently left Rajkot and has permanently settled in Junagadh. Allegation of sub-letting or transfer of interest in tenancy or assigning of tenancy right by the defendant no.1 to the defendant no.2 was also denied.

#. The trial Court found that the defendant no.1 had acquired alternative vacant and suitable residence for him, and that, he had illegally assigned or transferred tenancy rights in favour of the defendant no.2. With these findings, the suit was decreed.

#. Feeling aggrieved, an appeal was preferred by the two defendants, which was also dismissed. Hence, this revision.

#. Shri KB Pujara, learned counsel for the revisionist and Shri PV Hathi, learned counsel for the respondent were heard and the material on record was examined.

#. The first point for consideration in this revision

is, whether the defendant no.1 alone was the tenant in the suit premises. The case of the plaintiff/respondent has been that, the defendant no.1 alone was the tenant. As against this, the case of the defendant has been that, no doubt rent note was executed in favour of defendant no.1 but, he took on lease the suit premises for the joint family consisting of himself, his father and two brothers.

#. The two courts below, after considering the evidence on record, concluded that the defendant no.1 alone was the tenant. This finding is a pure finding of fact, which does not suffer from any error of law. Consequently, reappraisal of evidence, with a view to substitute the finding of the revisional Court is not permissible.

#. The view taken by the lower Appellate Court that, the present plaintiff has right to continue the suit is in accordance with law. The suit was filed initially by Parsottam Girdhar, who died during pendency of the suit. But, before that, in a family partition, the suit property came in the share of plaintiff's son Dayalal, who was subsequently impleaded as plaintiff in place of the deceased plaintiff (Parsottam Girdhar). As such, Dayalal had right to continue the suit on the same cause of action and the suit was maintainable.

##. Shri Pujara has contended that, the plaintiff has not examined any witness. The only witness examined is Narottam Hiralal and he is the witness who was holding power of attorney from the deceased plaintiff. He is the grand son of the deceased plaintiff. The contention of Shri Pujara has been that, the power of attorney holder has no right to enter into the witness box, nor he could depose about the facts, which were not within his personal knowledge; and as such, practically, there was no evidence from the side of the landlord, on which the suit could be decreed. The lower Appellate Court has rightly observed that, Narottam Hiralal, on the basis of power of attorney, was competent to enter the witness box. There is no prohibition in the power of attorney, under which he could not give evidence in Court. It was a general power of attorney, and as such, the power of attorney authorized the witness to enter the witness box in support of the case of the plaintiff. It may also be mentioned that the lower Appellate Court has observed that, 'it was not relying much upon oral evidence rather, it has relied upon documentary evidence on record.' In this view of the matter also, if the case was decided on the strength of the documentary evidence, not much

importance is to be given to the only witness of the plaintiff namely Narottam Hiralal.

##. The matters which are in personal knowledge of this witness were rightly relied upon by the lower Appellate Court. As such, I do not find any force in the contention that the attorney of the plaintiff had no right to enter the witness box and give evidence on behalf of the plaintiff. Since the power of attorney was executed by the deceased plaintiff and attorney appears to be grand son of the deceased plaintiff and the suit was continued on the same cause of action, the attorney could give evidence on the strength of power of attorney executed in his favour.

##. The next point for consideration is, whether the defendant no.1 had acquired suitable alternative accommodation in Junagadh ? On this point, Shri Pujara has contended that no decree under sec.13(1)(1) of the Bombay Rent Act could be passed if the so-called alternative accommodation was not acquired in the same City or Town. According to him, even if, the entire case of the landlord is accepted then, it is admitted and proved that the disputed premises stands in Rajkot. Whereas, the allegation of the landlord is that, the defendant no.1 obtained alternative accommodation in Junagadh; and since Rajkot and Junagadh are two different Districts, decree for eviction under sec.13(1)(1) of the Act could not be passed.

##. Sec.13(1)(1) of the Act provides that, '...notwithstanding anything contained in this Act but subject to the provisions of sec.15, the landlord shall be entitled to recover possession, if the Court is satisfied that the tenant after the coming into operation of this Act has built, acquired vacant possession of or been allotted a suitable residence.' In the case before me, it is not a case that the defendant no.1 has been allotted a suitable residence in Junagadh or has built suitable residence there. On the other hand, the allegation is that, the defendant no.1 has acquired vacant possession of a suitable residence. On plain reading of sec.13(1)(1) it can be said that, the alternative accommodation should be in the same Town or District where the disputed property stands. If a person has acquired some accommodation in other district or other state, it can not be said that he has acquired alternative vacant accommodation for his use.

##. In Ramagauri Girdharlal v. Narottam Narandas 16 GLR 176, it has been held by this Court that, sec.13(1)(1) of

the Bombay Rent Control Act can not apply to the tenant who acquired or is allotted vacant possession of premises in a different town. However, this case was rightly distinguished, on facts by the lower Appellate Court. On principles, the law laid down in this case can not be disputed but, it has to be seen, whether the accommodation in Junagadh is sufficient accommodation to accommodate the defendant no.1 and his family members. The extent of disputed accommodation is two rooms, a kitchen and a Osari; whereas, the accommodation in Junagadh consists of two rooms and a Osari. Thus, a kitchen is short in the accommodation at Junagadh, and as such, it can not be said that the alternative accommodation in possession of the defendant no.1 is sufficient to meet his requirements. Secondly, from the evidence on record, the lower Appellate Court found that, the defendant no.1 is not retaining possession of the disputed premises, as well as, the premises at Junagadh; rather he has permanently shifted to Junagadh about 4 - 5 years back and has parted possession of the disputed accommodation to his brother, defendant no.2. On this point, the lower Appellate Court has mentioned several facts and circumstances emerging from the documents on record, while coming to the conclusion that the defendant no.1 had shifted to Junagadh about 4 to 5 years back. The first circumstance found by the lower Appellate Court was that, the summons of the suit was served at the address of the defendant no.1 at Junagadh. The address was given near Ajanta Talkies. The second circumstance was that, the notice in suit Ex.30 sent by Regd.Post was also served on the defendant no.1 at Junagadh. Exhibits 34 and 35 are the extracts of municipal record for the years 1975 to 1980, which show that the defendant no.1 was tenant of the property belonging to Pitambar Nathubhai situated in Junagadh.

##. Nilesh, the son of defendant no.1 deposed that, he took a residential premises in Junagadh and executed a rent note and also received rent receipts; but in fact, neither the rent note nor rent receipts were filed by him.

##. Another Civil Suit No.352/71 was filed by the plaintiff against the defendant no.1 for recovery of possession of the same property on grounds of arrears of rent, in which it was alleged that the defendant no.1 was the tenant of the suit premises. The defendant no.1 filed written statement in that suit but, he did not plead therein that, he alone is not the tenant of the suit but, his whole joint family is tenant in the

accommodation. Similarly, the defendant no.1 filed Civil Misc. Application No.294/71 for fixation of standard rent against the deceased plaintiff. There also, he had shown himself as sole tenant of the suit property.

##. Father of the defendant no.1 was admittedly head of the family but, the lease was not taken in his name. Normally, if it was a joint family, the 'Karta' of the family should have taken lease of the demised premises. That was also not done. No rent receipt was issued in the name of the father of the defendant no.1. On such evidence, the Court below was justified in holding that, the defendant no.1 alone was the tenant.

##. Shri Pujara contended that the accommodation at Junagadh was taken for the son of the defendant no.1 for a temporary business of selling tools. However, no documentary evidence could be filed by the defendant no.1 or by his son that, the accommodation at Junagadh was taken by the son of the defendant no.1 on lease. It can not be accepted that, if the defendant no.1 would not have shifted to Junagadh, the notice in suit and summons of the suit could be served at Junagadh. The plaintiff's attorney has stated that, the defendant no.1 had shifted to Junagadh and has started carrying on his business there. He had personally gone to Junagadh and had personally seen the defendant no.1 carrying on his business in the accommodation obtained by him in Junagadh. On such evidence, the two courts below rightly concluded that, the defendant no.1 had permanently settled at Junagadh and has left the premises in suit at Rajkot, in possession of his brother, defendant no.2. It was not a case where additional accommodation at Junagadh was obtained only to accommodate the son of the defendant no.1. As such, if the defendant no.1 obtained alternative accommodation in other district and had permanently shifted there since 4 to 5 years and was residing there and was carrying on business there, certainly the provisions of sec.13(1)(1) could be applied for passing a decree for eviction of the defendant no.1.

##. So far as the plea of sub-letting is concerned, Shri Pujara contended that, valuable consideration for transfer of possession of the suit accommodation has not been established by the landlord hence, sub-letting is not proved. In a case like this, when the allegation of sub-letting was made against the tenant in favour of the real brother of the tenant in chief, it was difficult for the landlord to produce direct evidence of valuable consideration for transferring exclusive possession. However, it is established that, for the last 4 or 5

years, the defendant no.1 had permanently shifted and settled at Junagadh. It is also in evidence that, the defendant no.2 is the brother of the defendant no.1 and he is in occupation of the disputed premises. In such circumstances, it can be held that, the defendant no.1 had assigned or transferred, in any manner, his tenancy rights in favour of the defendant no.2. Even if, valuable consideration for transfer of exclusive possession could not be proved by the landlord, he could get a decree for eviction on the ground that, the tenant had transferred or assigned, in any manner, his tenancy rights in the suit accommodation; and, in so doing, he was not required to establish that such transfer or assignment was for valuable consideration.

##. There are three grounds under which decree for eviction could be passed under sec.13(1)(e) of the Act.

- (1) Unlawful sub-letting of the whole or part of the premises.
- (2) Assigning of the whole or part of the premises.
- (3) Transferring in any other manner tenant's interest in the suit accommodation.

##. Thus, the last two ingredients of sec.13(1)(c) are established in the instant case. Hence, the decree for eviction was perfectly justified.

##. The lower Appellate Court has rightly not considered the electoral roll and ration card filed by the defendant no.1 because, the notice for eviction was given in the year 1979 and the suit was filed in the same year. The electoral roll of the year 1975 or the ration card of the year 1976 was, therefore, not relevant and material and was rightly not considered by the lower Appellate Court.

##. In the result, I do not find any illegality or infirmity in the impugned judgment of the two courts below. The revision is thus without substance and force and is liable to be dismissed. The revision is hereby dismissed with no order as to costs.

OCTOBER 18, 2000 [D.C. SRIVASTAVA, J.]

After pronouncement of judgment Shri KB Pujara, learned counsel for the revisionist requests for time to vacate the suit accommodation. Six months time is granted for vacating the suit accommodation on revisionist filing usual undertaking within a period of two weeks from today that he shall not transfer

possession of the suit accommodation to anybody else and shall hand over vacant possession of the same to the respondent after expiry of the aforesaid period. The rent and mesne profits during this period shall be paid to the landlord.

OCTOBER 18, 2000 [D.C. SRIVASTAVA, J.]

/sakka f